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EXAMINER				
REICHLE, KARIN M				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/568,790

Applicant(s)

GLAUG ET AL.

Examiner

Karin M. Reichle

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2007.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-16 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 03 January 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date 2/06 and 1/07.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
5) ☐ Notice of Informal Patent Application.
6) ☐ Other: _____

DETAILED ACTION

Specification

Drawings

1. The drawings are objected to because Figure 1 should be labeled "PRIOR ART", see page 3, lines 7-8. The Figures are not consistent with the description thereof, i.e. show exploded partial cross sections but not described as such. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Description

2. The abstract of the disclosure is objected to because the abstract, i.e. a copy of the PCT abstract, is acceptable for filing purposes only. A clean copy must be filed prior to allowance, if any. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

3. Claims 11-14 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claims 11-12, it is unclear how many positioning/interposing steps at a minimum are required by the claims, i.e. if the step of positioning the polymer adjacent the barrier layer as claimed in claim 11 includes applying the polymer to the core as claimed in claim 12, i.e. the core has to be interposed as claimed in step b), how can there be a further step of interposing the core as claimed in claim 12 and/or wouldn't such interposing also be part of the attaching step b) not a further step? This also applies to similar language in claims 13-14. Furthermore with respect to claims 13-14, it is thereby unclear when the precursor is converted, i.e. if the positioning of the liquid on the core to provide regions of polymer is part of step a), how is it converted then in step b)? Are the regions formed in b) the same as those in a) or not? Thereby, a positive antecedent basis for "superabsorbent polymer" in section a) of claim 13 should be clearly set forth. In regard to claim 16, a positive structural antecedent basis for "absorbent layer" should be set forth.

Claim Language Interpretation

4. The claim language is interpreted in light of the definitions at page 4, lines 5-8 and 32-35 (note with regard to the latter that it refers to a core). Any terminology which is not explicitly defined will be interpreted in light of its usual, e.g. dictionary, definition. Claims 10 and 15-16 are product by process claims, see MPEP 2113, i.e. "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.' In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted)". However, note page 6, lines 6-8 with regard to the end product of such product by process claims. Due to the lack of antecedent basis set forth in the preceding paragraph claim 16 will be interpreted as requiring at a minimum a tissue layer or an absorbent layer with the superabsorbent as claimed. With regard to claims 3, 8, and 11-14 see page 8, lines 1-5 of the instant application. Due to the lack of clarity discussed supra, claim 12 is interpreted to require that the positioning step of claim 11 includes applying the polymer to the core and the attaching step of claim 11 includes interposing the core as claimed. This also applies similarly to the liquid in claims 13-14. Furthermore due to the lack of clarity discussed supra, the conversion of the precursor is interpreted to occur at least prior to positioning, i.e. the precursor is applied to the core and converted and then it is positioned as claimed.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Japan Absorbent Tech. Inst., EP '479.

Claim 1: See Claim Language Interpretation section supra, hereinafter referred to as CLI, and, e.g., paragraphs (ps.) 1, 21, 23-24, 27-28, 30, 52 and 56, i.e. '479 teaches an absorbent article, ps. 1 and 52, comprising a barrier layer 2, a cover layer 1 extending substantially parallel to the barrier layer, and a superabsorbent polymer 6 interposed between the cover layer and the barrier layer, the superabsorbent polymer being adhered to the article in a pattern, see Figures and p. 56, configured to distribute fluid in the absorbent article, see, e.g., p. 28, wherein at least one portion of the absorbent article extending essentially completely across the absorbent article is substantially devoid of the superabsorbent polymer, see p. 28 and Figures.

Claim 2: A core, 4 or 4 and 8, is interposed between the cover layer 1 and the barrier 2 layer, and the superabsorbent polymer is applied to the core or the barrier layer in the pattern, e.g. the layer 5 of core 4, see Figures.

Claim 3: This claim requires the pattern be configured to increase resistance of the absorbent article to tearing with the at least one portion of the absorbent article extending essentially completely across the absorbent article being more resistant to tearing than at least one other portion of the absorbent article, i.e. capabilities, functions or properties of the pattern.

See, CLI, e.g. page 8, lines 1-5 of the instant application. Since '479 teaches the claimed pattern as well as such functioning similarly to that disclosed at page 8, lines 1-5 of the instant application, at the very least, there is sufficient factual evidence for one to conclude that such pattern also inherently includes the function, capability or property claimed of such, i.e. increased resistance to tearing, see MPEP 2112.01.

Claim 4: A core, e.g. layer 5 of core 4 or 5 and 8 or 8, is interposed between the cover layer and the barrier layer, wherein the core comprises at least one of cellulose and cellulose acetate, see p. 30.

Claim 5: The core is selected from the group consisting of tissue, air laid composite, and paper towel sheet, see p. 25, or p. 30, i.e. wet process and dry process nonwoven fabrics.

Claim 6: The barrier layer comprises a material selected from the group consisting of polyethylene, polypropylene, copolymers of polyethylene and polypropylene, polyester, and bi-component fibers, see p. 21.

Claim 7: The cover layer comprises one or both of a non-woven material and an apertured film, see p. 21.

Claim 8: The pattern forms at least one region including the superabsorbent polymer and at least one continuous zone that is substantially devoid of the superabsorbent polymer, the continuous zone having greater tear resistance than the region including the superabsorbent polymer, see discussion of 3 supra.

Claim 9: The pattern is selected from the group consisting of a spiral pattern, a melt blown pattern, a multi-tracked pattern, a full coat pattern, a zoned spray pattern, and an intermittent pattern, see Figures and p. 56, e.g. an intermittent pattern.

Claim 10: The superabsorbent polymer is formed from one or more of a polymer in liquid form and a polymer formed by conversion of a superabsorbent precursor, the superabsorbent precursor comprising one or both of a monomer and an oligomer, see CLI, discussion of claims *supra* and p. 24, and thereby, by incorporation '230, e.g. the end product of '479 includes a superabsorbent polymer adhered thereto and/or the superabsorbent polymer is formed from a polymer in liquid form, e.g. a crosslinked superabsorbent polymer in dispersed form.

Claims 11-12: See the discussion of the claims *supra*, the CLI, p. 24 and thereby the translation of '230, and p. 22, '479 teaches a method of making an absorbent article comprising the steps of a) positioning a superabsorbent polymer adjacent a barrier layer 2 in a pattern to form at least one region including the superabsorbent polymer and at least one region substantially devoid of the superabsorbent polymer extending essentially completely across the barrier layer, by applying the superabsorbent polymer 6 to the core 4 which core is positioned adjacent the barrier layer, thereby providing the region substantially devoid of superabsorbent polymer with greater tear resistance than the region including the superabsorbent polymer, see discussion of claim 3 and MPEP 2112.02, and b) attaching a cover layer substantially parallel to and substantially coextensive with the barrier layer, thereby interposing the core/superabsorbent polymer between the barrier layer and the cover layer.

Claims 13-14: See the CLI *supra*, the discussion of claims 11-12 and note that the specifics of the precursor have not been claimed but note p. 27 in addition to p. 24, i.e. as best understood '479 teaches a method of making an absorbent article comprising the steps of a) positioning a liquid comprising a superabsorbent precursor, e.g. SAP in dispersion form, adjacent a barrier layer in a pattern to form at least one region including the superabsorbent precursor and

at least one region substantially devoid of the superabsorbent precursor extending essentially completely across the barrier layer, by applying a liquid to the core which includes SAP, e.g. in dispersed form, converting the superabsorbent precursor to a superabsorbent polymer, e.g. by drying/heating, thereby forming at least one region including the superabsorbent polymer and at least one region devoid of the superabsorbent polymer, thereby providing the region substantially devoid of superabsorbent polymer with greater tear resistance than the region including the superabsorbent polymer, and coupling a cover layer to the barrier layer, thereby interposing the core/superabsorbent polymer between the barrier layer and the cover layer.

Claim 15: See discussion of claims 1-10 supra, and the CLI, , i.e. '479 at the very least teaches the end product, i.e. an absorbent article comprising a barrier layer, a cover layer extending substantially parallel to the barrier layer, an absorbent layer interposed between the cover layer and the barrier layer; and a superabsorbent polymer adhered to the absorbent layer, the superabsorbent polymer being applied in a pattern configured to distribute fluid in the absorbent article, wherein portions of the absorbent layer are at least partially coated with the superabsorbent polymer and other portions of the absorbent layer are substantially free of the superabsorbent polymer. Note however p. 24, i.e. the SAP is applied in liquid form, a crosslinked superabsorbent polymer in dispersed form.

Claim 16: See claim 15 and the CLI, i.e. a tissue/absorbent layer, 8, or 4, or 8 and 4 is/are interposed between the cover layer and the barrier layer.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Phan '610 patent and thereby, Trokhan '747, Buell '003 and Osborn '264 also teach an absorbent article with patterned superabsorbent.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Karin M. Reichle/
Primary Examiner, Art Unit 3761

May 10, 2008